

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN DALE MAHLUM**, on March 6, 2001 at 3:00 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. Dale Mahlum, Chairman (R)
Sen. John C. Bohlinger, Vice Chairman (R)
Sen. Chris Christiaens (D)
Sen. John Cobb (R)
Sen. Jim Elliott (D)
Sen. Bill Glaser (R)
Sen. Duane Grimes (R)
Sen. Don Hargrove (R)
Sen. Ken Miller (R)
Sen. Emily Stonington (D)

Members Excused: Sen. Ken Toole (D)

Members Absent: None.

Staff Present: Leanne Kurtz, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 257, 3/1/2001
HB 298, 3/1/2001

Executive Action: HB 179 BCAA
HB 298 BC
HB 257 TABLED

{Tape : 1; Side : A; Approx. Time Counter : 0}

HEARING ON HB 257

Sponsor: REP. CINDY YOUNKIN, HD 28, BOZEMAN

Proponents: Gordon Morris, Director, MT Assoc. of Counties (MACO)
Tom Stelling, Cascade County Commissioner
Jennifer Smith Mitchell, Gallatin County Commissioner
Mona Jamison, Lobbyist, Gallatin County

Opponents: Joyce Schmidt, Gallatin County Auditor
Susan Reed, Missoula County Auditor
Susan Lupo, Yellowstone County Auditor

Opening Statement by Sponsor:

REP. CINDY YOUNKIN, HD 28, BOZEMAN. This bill deals with the structure and process of how claims and warrants within the county are paid. This section of law has not been touched by the legislature since 1947. It was not clear what would happen if the commissioners say, "Pay the bill," and the auditor says "No." The county commissioners are the elected officials within the county that have the policy and budget-making authority. It is not the auditor's job to do that. It appears that sometimes the auditor superimposes his/her policy on the commissioners' policy.

Revisions to 7-6-2407 provide a specific process for claims which may be contested between the commissioners and the auditor, and provide time lines and specifics as to who is going to appeal an adverse decision. It does not eliminate checks and balances. The auditor must still review claims, which is an important part of the process, and approve a claim before payment may be made. If the auditor disapproves, the commissioners may order payment. Within seven days, the auditor can appeal that decision to the district court. This puts the decision of payment with the commissioners first, rather than with the district judge. Under the current process, the commissioners have not had the ability to say yes or no before it goes to the district judge.

There are only a few counties that have auditors. Six counties have full time auditors, Butte/Silver Bow, Flathead, Gallatin, Hill, Missoula, and Yellowstone. There are four other counties that have auditors combined with other jobs. Lake County has an auditor/administrator; Lewis & Clark County has an auditor/surveyor; Ravalli County has an auditor/attorney; Cascade has an auditor/clerk & recorder. Typically, the function of the auditor is to pay the warrants and bills. In some counties, the clerk and recorder does this.

Proponents' Testimony:

Gordon Morris, Director, MACO. MACO had Resolution 2000-05 that went before the Association last September and was adopted without objection by all the counties in attendance. A copy **EXHIBIT (los51a01)** was handed to the secretary. The language of the Resolution is the same as the language in HB 257. This Resolution had a life even before last September. The Association had a Resolution back in 1996 that was similar and had been brought to the membership by the Yellowstone County Commissioners. A bill was introduced in the 1997 Legislative Session, also similar to HB 257. It was unsuccessful. They continued, however, to bring this change about. This is a bill that simply substitutes the subjectivity of county auditors for the objectivity of county commissioners. It allows the commissioners to determine payment of a claim. It allows the auditor the same provisions that the commissioners have now under current law, namely to go to court relative to the commissioners' decision that a claim should have been approved over the objection of a county auditor. There should be no fiscal impact to the county.

In fairness to the committee, this really is, to some extent, an issue of "dirty laundry." It is a matter of the subjectivity of the auditor as to whether or not a claim should be approved or denied. The auditor should base his/her decision solely on the policy-making decisions of the county commissioners as set forth in their adopted budget. It shouldn't be decided by an auditor, who is looking with something less than objectivity, to make the final decision. This bill would remove that subjectivity.

Tom Stelling, Cascade County Commissioner. All three commissioners of Cascade County are in support of this bill. It is long overdue. There is not a county in Montana that has not had a problem with this process. The commissioners should have the sole responsibility as to which claims are paid. This should not rest with the auditor. He had problems within his own county. The auditor should not be able to override the commissioners based on his/her personal preference.

Jennifer Smith Mitchell, Gallatin County Commissioner. She gave her testimony and handed in a written letter showing support of all three commissioners **EXHIBIT (los51a02)**. They have experienced problems with their auditor. The county attorney still provides legal representation for both commissioners and auditor.

Mona Jamison, Lobbyist, Gallatin County. She spoke on governance. She, at first, wondered why the bill was needed. The language was old. As an attorney, she inquired about the

standards. With three elected county commissioners and an elected auditor, who should be sitting in judgement over whom? The commissioners hold a higher position in the county. There were no standards in the law. The status quo in Montana today is that auditors can veto the obligations and the economic obligations that run from those obligations, i.e. contracts, etc. The process under current law gives the auditor so much discretion, that, in fact, they have veto authority. The burden of proof should be on the denier of the claim. The denier is the auditor. This bill is about checks and balances.

Opponents' Testimony:

Joyce Schmidt, Gallatin County Auditor. She gave her testimony and handed in a written copy **EXHIBIT(los51a03)**. She strongly stated that auditors do not capriciously approve or deny claims. There is policy put forth by the commissioners and as an auditor, she holds those claims up to the set policy and looks to see if it fits or not. The auditor simply verifies that the rules are being followed. Over a six year period, she has denied seven claims out of 70,000. Four of those were denied because they were in violation of state law.

In July, 2000, one Gallatin County Commissioner was quoted in the newspaper as saying, "If we want to send a time capsule into space, of what business is it of the county auditor?" She then reiterated that if a claim doesn't violate the law, if it doesn't violate a contract, and if it follows the standards and procedures of the county, she most assuredly would sign off on the claim. The commissioners have the right to make the policy decisions and the auditors only follow those policies. The auditor may not agree with the commissioners, but it is the commissioners call.

Susan Reed, Missoula County Auditor. She did not understand why this bill was even introduced to the Legislature. Mr. Morris did suggest and alluded to the fact that this bill was airing "dirty laundry." This bill is due to a conflict between the commissioners and the auditor in Gallatin County as well as other commissioners and auditors. She believed firmly that it should be resolved at the local level. It is not a state issue. The bill is redundant. The allegations made by the proponents would suggest that the auditors capriciously reject bills. The commissioners have the responsibility and the authority to set county policy. She feels that she is the enforcer of those policies. Claims are rejected if those claims are illegal and go against county policy. If she were to reject a claim and the commissioners did not agree, they could change the policy to fit the claim. There is no need to even think of taking a claim to

court. This would be costly to the county taxpayers. This bill is a waste of the Senators' time.

Susan Lupo, Yellowstone County Auditor. She gave her testimony and handed in the letter **EXHIBIT (los51a04)** from which she read. Her county commissioners supported her and were not in favor of this bill. They had signed the letter in support of auditors and the current law.

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Questions from Committee Members and Responses:

SEN. JOHN COBB asked what happens under current law and have any commissioners gone to court. **REP. YOUNKIN** did not know. **Gordon Morris** was aware of only one case. That case was Reed vs Missoula County Commissioners, dated 1980/81. That decision basically decided the commissioners had the final authority. He was not aware of any case that addressed the denial of a claim that was taken to court.

SEN. COBB questioned the language of the county paying all the court fees if it is substantially justified. **REP. YOUNKIN** replied that language was added in the House Local Government Committee. The county would have to pay and that language was added to insure the auditor would not have to pay. Most cases have some arguable substance and she did not think a totally frivolous case would ever happen.

SEN. COBB felt the language was confusing and not necessarily needed.

SEN. COBB asked **Joyce Schmidt** to respond to his previous questions. **Ms. Schmidt** replied that there had been a case over a claim that had gone to court. Dolan vs Major, 1920, which is the prevailing law at this point. The second question concerned who should bear the burden of proof. This bill would change that onus from the commissioners to the auditor. She wondered about a statement in the bill that said the claimant, taxpayer or resident may appeal the decision of the board. She did not see the Board of Commissioners or the auditor in that statement.

SEN. COBB further asked what she thought about the fact that the commissioners, under this bill, could override her decision and force her to go to court with the county paying for it in any case. **Ms. Schmidt** informed the committee that the current law encourages the commissioners and the auditor to try every avenue before going the district court route. This bill makes it that much easier for the commissioners to do what they want to do.

They already have a great deal of discretionary power. They make the policies and adopt the standards. The auditor does not make or create, she merely follows those standards. Her track record of six years, with seven denied claims out of 70,000 claims, shows that the current law is working well.

SEN. CHRIS CHRISTIAENS wanted to know the size of claims that seem to be at issue. **Ms. Schmidt** replied that those claims are rather small. The most expensive one is approximately \$8900.

SEN. CHRISTIAENS stated that as he looked at the testimony, these issues would seem to be outside a contract agreement or a policy. He wanted to know what, for \$8900, would not fall within those areas. **Ms. Schmidt** spoke of the claim that occurred in Jefferson County. She and the county attorney could not find a tie as to why the county should pay the claim. It was eventually resolved when the Board entered into a contract, after the fact, to repair a dike, a piece of infrastructure, in an adjoining county.

SEN. CHRISTIAENS inquired how common the problem was that prompted a resolution within MACO and brought the bill here to the legislature. **Mr. Morris** restated there are only 10 full or part time auditors in the state. The issue had been before the Association several times and he felt it was worth bringing it to the Legislature.

SEN. CHRISTIAENS asked how often this situation occurs in Cascade County. **Tom Stelling** gave an example that had happened only yesterday. There had been a \$19.95 claim for a frame for a certificate that one of the commissioners had purchased. The auditor denied it and said it was not a legitimate claim. Another claim for approximately \$200 in December was denied. All three commissioners signed it and sent it back three times. It was payment to the County Planning Board. They get a per diem allowance and the claim concerned a dinner they had. The commissioners said it was legitimate. Arbitration occurred between him and the auditor and it finally went through. It took one month to finalize.

SEN. CHRISTIAENS asked how the frame fell outside of either contract agreement or policy. **Mr. Stelling** said basically it fell outside policy because the commissioners don't have a specific policy allowing it. The commissioners feel they should have some discretionary powers.

SEN. CHRISTIAENS inquired as to what means the commissioners have of paying a claim that does not fall into those particular policies. **Mr. Stelling** replied that at this time, if the issue is not resolved, they would have to go to court.

SEN. JIM ELLIOTT questioned if any of the claims that have been denied by the auditor had been submitted by any one other than the commissioners. **Mr. Stelling** said no.

SEN. ELLIOTT asked the same question of **Ms. Mitchell**. **Jennifer Smith Mitchell** said no.

SEN. ELLIOTT commented that this seems to be an in-house fighting issue. He wanted to know what precipitated this fighting.

Ms. Mitchell responded that there had been a number of bills denied. The one that was discussed happened between Jefferson County, Broadwater County and Gallatin County. It concerned the Meridian Bridge and a dike that had been put in by the Army Corp of Engineers. They had signed it over to the counties to maintain it. This happened in the flooding time of 1957. The county attorney and the auditor's determination was the commissioners could not spend Gallatin County taxpayer money in another county. The Jefferson River meanders throughout all three counties. It protects the roads and the Meridian Bridge which is for all three counties. Historically, all three counties pitched in and paid for the maintenance. It did eventually get paid. The commissioners did not want to take the auditor to court and no claim had been appealed to the district court.

SEN. ELLIOTT wondered if the Board of Commissioners stood behind the bill. **Ms. Mitchell** answered yes and mentioned her letter **(EXHIBIT 2)**.

SEN. ELLIOTT asked if the three counties had gotten together to work on the issue of payment. **Ms. Mitchell** responded yes. Those two counties paid their part immediately and Gallatin County did finally pay later.

SEN. ELLIOTT inquired how many Boards of Commissioners out of the 10 were in agreement with this bill. **Mr. Morris** stated that only Yellowstone County was not in favor. At one point Yellowstone County was pushing for a bill like this. He offered a newspaper article **EXHIBIT (los51a05)** as corroboration. He surmised that they have a new county auditor and must be very pleased with the relationship. (Later in the questions, one other county, Missoula County, was not in agreement with the bill.)

SEN. COBB asked if this bill would cause more appeals and court costs. **Ms. Mitchell** explained that, under current law, the commissioners would have to take the auditor to court. Under the new bill, the onus would be on the county auditor. That is the major difference.

SEN. ELLIOTT wondered if the Missoula county commissioners had ever come to the auditor and said, "We are thinking of making an expenditure and we would like your advice about whether a certain expenditure was legal or within the standards." **Susan Reed** offered that she has been the auditor for sixteen years and though she had not asked for a letter of support from her commissioners, they do support her. As to the question, she answered no. Rather recently the commissioners and she rewrote all the policies for the county. They did this with her input. If a claim fits all the parameters, there should not be a question as to whether or not a claim should be paid.

SEN. ELLIOTT stated that this kind of working together had eliminated the kind of problems that have been aired today. **Ms. Reed** answered yes. The commissioners make the policies and the auditor enforces them. There are claims that come across her desk that she does not like. But if they follow policy and are not against the law, they are paid. It is business; it is not personal.

SEN. ELLIOTT said that he did not like to see this kind of bill before the legislature. The legislature should not have to be a referee in political matches. Missoula County should be looked at as an example for other commissioners and auditors.

Closing by Sponsor:

REP. YOUNKIN closed. She appreciated the comments but felt that laws are made to guide and settle disputes such as this. This bill will simply change the order of the process. The auditor will bear the burden of proof. The onus should be on the denier. There should be no fiscal note for the counties. This bill would not prevent commissioners and auditors from resolving disputes. They don't want to spend time and money by going to court. They want to get the people's work done in the most efficient and timely manner. The county commissioners should have the last word before going to court, not the county auditor.

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HEARING ON HB 298

Sponsor: REP. TOM FACEY, HD 67, MISSOULA

Proponents: Bruce Bender, Director, Public Works, City of Missoula

Alec Hansen, MT League of Cities/Towns
Joe Masurek, City of Great Falls

Cliff Christian, MT Building Industry Assoc.
Jani McCall, City of Billings

Opponents: None

Informational Testimony: **Eric Fehlig, Building Codes Division,**
Department of Commerce

Opening Statement by Sponsor:

REP. TOM FACEY, HD 67, MISSOULA. Cities and counties must adopt the code that the Department of Commerce supports. This bill will allow cities and counties to do this in a different way. The current law states that the city or county commissioners had to adopt the code by ordinance. This bill would allow them to adopt the code by ordinance or by administrative action. Administrative action means an action by the mayor or some designated person on the city or county commission.

Proponents' Testimony:

Bruce Bender, Director, Public Works, City of Missoula. This bill will enable efficiencies for the cities and counties to adopt codes. The state is in a dutiful and responsible role as they update their codes as the codes are being updated nationally. He showed two of the six volumes they work with right now. Every two to three years, the state is upgrading and adopting the latest national codes that come forward. The cities and counties then must adopt what the state has adopted. Currently they have to go through a lengthy ordinance process with public hearings. This bill gives the cities and counties the opportunity to adopt the codes administratively.

Alex Hansen, MT League of Cities/Towns. His organization supports the bill. It is permissive and not mandatory. Adopting technical codes by administrative action makes sense.

Joe Masurek, City of Great Falls. The city supports the bill for many of the reasons already given. One concern of cities is that when the code is updated and the state adopts it, the local communities have a very tight time frame of 90 days which they, in turn, have to adopt the revisions. If they miss the deadline or get the process started late, they can't update the code for another two years or so. This bill provides a more simplified process and will help them a great deal in adopting revised codes.

Cliff Christian, MT Building Industry Assoc. As builders, they are the ones that face the building codes and work with them on a

daily basis. There have been some revolutionary changes in the building codes that have streamlined the efficiency process and time is money. The process, hopefully, will be done with administrative action and will provide citizens with the necessary safeguards rather than with the archaic ordinances that are currently used.

Jani McCall, City of Billings. The city supports the bill. There was a great deal of contention around extended jurisdiction and building codes. What the city did in the interim, was to put together a working group which was made up of legislators, city council, city staff and also county commissioner. They worked out the issues and came up with the administrative process that helped solve the issues around the extended jurisdiction. A compromise was reached that solved most of those issues.

Opponents' Testimony: None

Informational Testimony:

Eric Fehlig, Attorney, State Building Codes Division, Department of Commerce. The bill allows a discretionary portion of the ordinances that the cities and counties can adopt. Once that decision is made, the rest is non-discretionary. They have to adopt exactly what the state has adopted. This will save time and effort.

Questions from Committee Members and Responses:

SEN. DUANE GRIMES asked if the cities and counties can adopt more stringent building codes than the state adopts. **Eric Fehlig** said no. The local governments cannot adopt anything other than what the state has adopted. The reason is the state wants a statewide code to guide all cities and counties.

SEN. GRIMES felt that the City of Helena had a different building code than areas outside the city. He felt that within the city, there were more stringent codes. **Mr. Fehlig** said if the local government is not enforcing the building codes, the burden falls upon the State Building Codes Division. For instance, here in Helena, the city enforces building codes within the city limits. Outside the city limits and in the county, it is enforced by the State Building Codes Division. The codes for a commercial building built in the county versus the city are the same. The option for local governments is that they may enforce building codes on residential structures. If it is in the state's jurisdiction, the state is precluded from forcing building codes on residential constructions. The state still enforces the electrical and plumbing codes.

SEN. GRIMES thought he might be mistaking right-of-way corridors. This would be more in planning issues and not the building codes. Would this bill allow cities to develop more stringent codes for residential constructions. **Mr. Fehlig** said the cities, as part of their all encompassing ordinance, could decide that they would enforce building codes, plumbing, electrical, mechanical codes and enforce it on buildings. That is the discretionary part. Once that has been established, the rest will be done by ordinance.

SEN. GRIMES did not want to allow for tougher or broader regulations to take place through administrative rule. **Cliff Christian** responded that they had looked at the bill very closely and the cities and counties cannot be any more stringent than the state codes.

CHAIRMAN DALE MAHLUM wanted to know if the City of Missoula could put undue restrictions on the big building going up by the airport in Missoula. **Mr. Bender** said no. It would not affect, in any way, what they could enforce in what is being done. Currently, the city is required by the state to adopt these codes by ordinance; this bill only allows them the possibility to adopt by administrative action. The actual enforcement of the code or the code, itself, is not being changed.

Closing by Sponsor:

REP. FACEY closed. This bill would not allow the engineers to order ten inch walls when the state requires six. If the bill were to pass, there would be a notification to the state in the form of a letter saying the codes have been adopted. That is important for the lawyers who like to sue each other. If the city council or the county commissioners give the authority to have the codes adopted by administrative action, they can also take it away. It is optional both ways.

EXECUTIVE ACTION ON HB 179

Motion: **SEN. HARGROVE** moved that **HB 179 BE AMENDED**

EXHIBIT(1os51a06).

Discussion:

SEN. HARGROVE informed the committee that his group had met with the sponsor and prepared an amendment which satisfied the subcommittee. He gave a handout **EXHIBIT(1os51a07)** that showed what the bill with the amendment was addressing. The

subcommittee tried to make the amendment as simple as possible. The amendment used the figures of \$100,000 and \$200,000 as well as allowing for other values of homes in the district to be used, if appropriate.

SEN. CHRISTIAENS felt that as a member of the subcommittee, it was important to show what an increase cost would be on two different values. People would not be misled with two different values being shown.

SEN. GRIMES said that would show people it is not necessarily proportional. He then asked was the issue of changing values on a mill address?

SEN. HARGROVE said that it had been pointed out to the subcommittee that it didn't make any difference. Whoever is going to be assigning those numbers is going to be addressing whatever the value happens to be in that area. If economic values go up or down, there will be changes. But to make the bill anymore complicated would be a mistake.

Vote: Motion that **HB 179 AMENDMENT BE ADOPTED** carried 8-0.

Motion/Vote: **SEN. COBB** moved that **HB 179 BE CONCURRED IN AS AMENDED**. Motion carried 7-1 with Miller voting no.

EXECUTIVE ACTION ON HB 298

Motion/Vote: **SEN. COBB** moved that **HB 298 BE CONCURRED IN**. Motion carried 8-0.

EXECUTIVE ACTION ON HB 257

SEN. CHRISTIAENS first asked who audits the county auditor. The county auditor is responsible for making sure the claims are within the policy standards. If the commissioners can overrule the auditor and the auditor's books are audited, who is held responsible for the claims that the auditor would not sign off on. **Gordon Morris, MACO**, responded that the audits are in the codes and they are audited every one to two years. A private audit can be contracted for or the Department of Commerce can be contracted.

{Tape : 2; Side : B; Approx. Time Counter : 0}

(The question was not actually answered to SEN. CHRISTIAENS satisfaction.)

SEN. CHRISTIAENS responded that it frustrated him no end because the legislature is being asked to clean up some stuff that two elected agencies within local government cannot resolve. In Great Falls, they can't get the three commissioners to agree let alone agree with the auditor.

SEN. ELLIOTT did not like this type of legislation. He reiterated the sentiments of **SEN. CHRISTIAENS**. He felt that a solution is available and is being practiced in at least one county.

SEN. GRIMES felt the bill should not be feared because the legislature does establish areas of responsibility. He didn't think it was all that onerous. If the commissioners want to take on that responsibility when a professional auditor has denied a claim, then that is not too dissimilar to the legislature disagreeing with the state auditor.

Motion/Vote: **SEN. ELLIOTT** moved that **HB 257 BE TABLED**. Motion carried 8-2 with Christiaens and Grimes voting no. There was a roll call vote taken.

ADJOURNMENT

Adjournment: 5:00 P.M.

SEN. DALE MAHLUM, Chairman

MARY GAY WELLS, Secretary

DM/MW

EXHIBIT(los51aad)